

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE GENETICALLY MODIFIED) Case No. 4:06MD1811 CDP
RICE LITIGATION) ALL CASES

CASE MANAGEMENT ORDER No. 11

This order applies to all cases other than the Non-Producer Cases, which are governed by Case Management Order No. 9. As contemplated by the discussion held at the status conference on October 16, 2008, this Order sets the schedule and method for selecting cases for bellwether trials in this district. The order also sets future dates for telephone conferences and a separate status and scheduling conference to determine a schedule for cases that will not be in the initial trial pool.

An essential disagreement between Lead Plaintiffs' Counsel and Lead Defendants' Counsel relates to the selection of bellwether trial cases. The parties agree that the court should conduct separate bellwether trials for sample plaintiffs from each of the five states involved here, but they disagree on how to select those plaintiffs and cases. Plaintiffs have proposed that the individual claims of the plaintiffs who were named plaintiffs to the master class action complaint [docket #264] should form the pool for the bellwether cases. Defendants object that they

should be able to select some cases, and propose that both parties make selections from cases in which *Lexecon* waivers are filed. I will borrow from each party's suggestion, but adopt neither in its entirety.

Even without *Lexecon* waivers there is a pool of plaintiffs whose cases could be tried in this district. Seven cases were filed here originally. Six of those cases encompass 10 Missouri producer plaintiffs. The seventh has 257 plaintiffs, with approximately 50 being Arkansas farmers, and the remainder being Missouri farmers. The master class action complaint named 21 plaintiffs: five from Arkansas, and four each from Louisiana, Mississippi, Missouri, and Texas. The evidence developed in the class-certification motion process, however, showed that some of those plaintiffs were not suing in the proper capacity, whether because they were partnerships or otherwise. When the proper plaintiffs are named there may be as many as 40 plaintiffs covered by that complaint. All of those cases are available for trial in this district. I do not know if other plaintiffs intend to waive venue objections under *Lexecon*. It would be preferable to have a larger pool of plaintiffs available from Texas, Louisiana and Mississippi, obviously, but even in the absence of venue waivers, there are sufficient plaintiffs from each state to have the expected first round of bellwether trials representing claimants from each state.

This order sets a procedure for selection of 50 cases to be in the initial trial pool, with the idea being that we should expect to conduct bellwether trials of 10 plaintiffs' claims. I urge the parties to select cases that will be representative, so that we may obtain maximum benefit from the bellwether concept. Plaintiffs may choose to select the claims of the plaintiffs named in the Master Complaint, as they have suggested, or they may select others. The parties will be expected to conduct full discovery on all 50 cases. I realize that is a large number, and if counsel can agree on a somewhat smaller number, they should do so. I expect the parties to conduct full discovery on a significant number of cases, however, because we need to have a pool of trial-ready cases in case the initial ten do not reach trial for some reason.

This order also sets out a schedule for further telephone conferences and joint status reports. If the parties have scheduling or discovery disputes, I expect to resolve them at the telephone conferences. In February we will determine the schedule for the producer cases that are not selected to be in the initial trial pool. Additionally, I am in the process of expanding the description of this case on the court's web page, and counsel and the parties should check that site in the next few weeks to see if the updated format and information is helpful. I will entertain suggestions for any other changes the parties might request.

Accordingly,

IT IS HEREBY ORDERED:

A. Initial Trial Pool Cases

1. Selection of Initial Trial Pool:

From the plaintiffs' claims available for trial in this district (whether because they originally filed here, are named in the Master Complaint, or have filed *Lexecon* waivers by December 1), each side shall select five from each state for inclusion in the Initial Trial Pool. The selections shall be made simultaneously, by email, at **4:00 p.m. Central Time on December 16, 2008**. Lead Counsel may agree to a different method of notifying one another of their simultaneous selection, but the timing cannot be changed by more than 24 hours. The selections must identify each plaintiff by full name, must set out the state where the plaintiff's farms are located, case caption, MDL docket number of complaint, individual Eastern District Case Number, and transferor court and case number.

2. **Pleadings:** Plaintiffs selected for the Initial Trial Pool must file any amendments to their complaints, including any amendments to the Master Complaint to correct deficiencies in capacity to sue allegations, no later than **January 5, 2009**. Defendants (who were already properly served) shall file answers to the complaints no later than **January 23, 2009**.

3. **Fact Discovery:** Fact discovery related to Initial Trial Pool plaintiffs must be completed no later than **April 17, 2009**.

4. **Expert Discovery:** Initial Trial Pool plaintiffs must disclose all expert witnesses and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **April 3, 2009**, and shall make expert witnesses available for depositions, and have depositions completed, no later than **May 1, 2009**.

Defendants must disclose all expert witnesses and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **May 29, 2009**, and shall make expert witnesses available for depositions, and have depositions completed,

no later than **June 26, 2009**.

Initial Trial Pool plaintiffs must disclose any rebuttal expert witnesses and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **July 24, 2009**, and shall make expert witnesses available for depositions, and have depositions completed, no later than **August 14, 2009**.

5. **Close of Discovery**: All Initial Trial Pool case discovery shall be completed by **August 14, 2009**.

6. **Selection of Cases for Initial Trials**: Lead counsel are urged to reach agreement on cases for trial, but in the absence of agreement then no later than **July 20, 2009** defendants and plaintiffs shall each notify the other of their selection of one plaintiff from each state (for a total of ten parties or cases) to be tried first. No later than **July 24, 2009** counsel shall file a joint list of the cases selected for trial, along with a statement of any agreements they have reached about the order they believe should be followed and the estimated length of each trial.

7. **Dispositive and Daubert motions**: For all ten cases selected in paragraph 6 above for trial, the parties must file any motions for summary judgment or motions to exclude or limit expert testimony under *Daubert* or for any other reason by **August 10, 2009**. Briefs in opposition must be filed by **September 10, 2009**, and reply briefs must be filed by **October 2, 2009**.

8. **Trials**: The Court will notify the parties of the order in which the trials will be conducted no later than **September 21, 2009**. The first trial will begin on **November 2, 2009**, and my intention would be to have one week off before starting the next trial. Pretrial submissions for the first trial will be due by **October 15, 2009**, and the Court will provide a more specific list of pretrial submissions required when the trial schedule is set.

B. Cases Not Included in Initial Trial Pool:

Except for Plaintiff Fact Sheets and documents ordered produced previously, discovery in cases not included in the Initial Trial Pool will remain

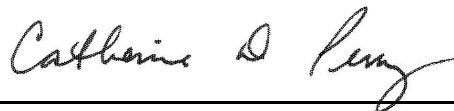
stayed until February of 2009. The Court will hold a scheduling conference on **Thursday, February 19, 2009 at 1:30 p.m.** (in Courtroom 14 South, with telephone participation allowed as in the past) to consider an appropriate schedule for these cases. The parties must jointly propose a schedule for discovery, motion practice, and trial or remand for these cases no later than **February 10, 2009**.

C. Monthly Telephone Status Conferences

The Court will schedule monthly telephone conferences with lead counsel. For each conference, plaintiffs' lead counsel will place the call and make arrangements for having all counsel who wish to participate on the line. The calls will be on the record. One week in advance of each call, lead counsel shall file a joint status report setting out the current status of the work and any topics they wish to address during the conference. I especially expect to use these conferences to address any disputes over scheduling or discover that might arise. The dates and times for the telephone conferences are:

Thursday, November 20, 2008 at 12:30 p.m.
Thursday, December 18, 2008 at 12:30 p.m.
Thursday, January 29, 2009 at 12:30 p.m.
Thursday, March 5, 2009 at 12:30 p.m.
Thursday, April 16, 2009 at 12:30 p.m.
Thursday, May 21, 2009 at 12:30 p.m.
Thursday, June 25, 2009 at 12:30 p.m.
Thursday, July 30, 2009 at 12:30 p.m.

Further conferences will be set by later orders, as needed.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 3rd day of November, 2008.